

§ 97-133. Powers and duties of the Association.

- (a) The Association shall:
 - (1) Repealed by Session Laws 1999-219, s. 7.2, effective June 25, 1999.
 - (1a) Administer a fund, to be known as the North Carolina Self-Insurance Security Fund, which shall receive the assets of the North Carolina Self-Insurance Guaranty Fund previously established under subdivision (2) of this subsection, the assessments required by subdivisions (2a) and (3a) of this subsection and any other sums received by the Association. The costs of administering the Association shall be borne by the Fund. The Association is authorized to secure insurance, primary excess insurance, reinsurance, bonds, other insurance, financial guarantees and related financial instruments to effectuate the purposes of the Association. The Board will invest the Fund assets pursuant to an investment policy adopted by the Board and reviewed and approved annually by the Department of the State Treasurer. The earnings from investment of Fund assets shall be placed in or credited to the Fund.
 - (2) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.
 - (2a) Establish and operate the Association Aggregate Security System as defined in G.S. 97-130 and G.S. 97-165 as follows:
 - a. The Association shall annually operate and provide an Association Aggregate Security System through a combination of cash on deposit in the Fund, securities, surety bonds, irrevocable letters of credit, insurance, reinsurance, or other financial instruments or guarantees owned or entered into by the Association. The Association shall assess the individual self-insurers that participate in the Association Aggregate Security System pursuant to subdivision (3a) of this subsection.
 - b. through d. Repealed by Session Laws 2011-196, s. 10, effective July 1, 2011.
 - e. If the Association determines it is not feasible or practical to operate the Association Aggregate Security System in any given year, it may terminate or suspend the Association Aggregate Security System and shall notify the Commissioner at least 90 days prior to the termination or suspension of the Association Aggregate Security System for that particular year. During any period that the Association Aggregate Security System is terminated or suspended, every self-insurer shall deposit with the Commissioner, or continue to deposit, the amount required by G.S. 97-185(b3) in the manner prescribed by G.S. 97-185(c).
 - f. Group self-insurers shall not participate in the Association Aggregate Security System.
 - (3) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.
 - (3a) Assess members of the Association as follows:
 - a. Association Aggregate Security System assessments. – The Association shall assess each individual self-insurer participating in the Association Aggregate Security System a security system assessment. The amount of the security system assessment charged to each individual self-insurer participating in the Association

Aggregate Security System shall be based on the Association's reasonable consideration of all of the following factors:

1. The total amount of assessments necessary to provide aggregate security for all participating individual self-insurers.
 2. The individual self-insurer's total workers' compensation liabilities under the Act.
 3. The financial strength and creditworthiness of the participating individual self-insurer.
 4. Any other relevant factors.
- b. Special assessment. – In the event that there are covered claims against an insolvent member or members and the assets of the Fund are not sufficient to pay the obligations of the Association, then the Association may collect a special assessment from the members in an amount sufficient to pay the aggregate value of such covered claims. Each member's special assessment shall be determined by the Board and shall be based on the proportion of the member's total obligations under the Act to the aggregate total of all members' obligations under the Act.
- c. Initial assessments. – An individual self-insurer that becomes a member and does not initially participate in the Association Aggregate Security System shall pay an initial assessment to the Association in an amount determined by the Board. A group self-insurer, upon receiving its initial license from the Commissioner, shall pay an initial assessment to the Association in an amount determined by the Board.
- d. Each member shall be notified of assessments no later than 30 days before the assessment is due.
- e. Delinquent assessments, except as otherwise provided, shall bear interest at a rate to be established by the Board.
- f. Group assessments. – The Association may annually assess each member group self-insurer in an amount not to exceed two percent (2%) of the group self-insurer's annual gross premiums for the preceding calendar year, as determined under G.S. 105-228.5(b), (b1), and (c).
- (4) Be obligated to pay covered claims.
- (5) After paying any covered claim, be subrogated to the rights of the injured employee and dependents and be entitled to enforce liability against the self-insurer or any third party by any appropriate action brought in its own name or in the name of the injured employee and dependents.
- (6) Expend Fund assets in amounts necessary to pay all of the following:
- a. The obligations of the Association under this Article subsequent to an insolvency.
 - b. The expenses of handling covered claims subsequent to an insolvency.
 - c. The cost of examinations under G.S. 97-137.
 - d. The costs of implementing and operating the Association Aggregate Security System.
 - e. All other expenses authorized by this Article.

- (7) Investigate claims brought against the Association and adjust, compromise, settle, and pay covered claims to the extent of the Association's obligation; and deny all other claims. The Association may review settlements to which the insolvent member was a party to determine the extent to which such settlements may be properly contested.
 - (8) Notify such persons as the Commissioner directs under G.S. 97-136.
 - (9) Handle claims through its directors, its employees, or through one or more members or other persons designated as servicing facilities. Designation of a member as a servicing facility may be declined by such member.
 - (10) Reimburse each servicing facility for obligations of the Association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the Association.
 - (11) Pay any other expenses of the Association authorized by this section.
 - (12) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.
 - (13) Require each member to annually determine its total undiscounted workers' compensation claims liability and require each member to notify the Association of this determination.
- (b) The Association may:
- (1) Employ or retain such persons, including, but not limited to, adjustors, brokers, accountants, attorneys, financial advisors, investment bankers, placement agents, and consultants, as the Board may determine are necessary to handle claims, perform other duties of, provide services to, and consult with the Association.
 - (2) Borrow funds necessary to effect the purposes of this Article in accord with the Plan, including entering into standby lines of credit.
 - (3) Sue or be sued.
 - (4) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this section.
 - (5) Perform such other acts as are necessary or proper to effectuate the purpose of this section.
 - (6) Repealed by Session Laws 2011-196, s. 10, effective July 1, 2011.
- (c) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006.
- (c1) The Association shall provide in its Plan that the functions of administration and adjusting claims shall not be performed by the same entity that provides legal representation to the Association for claims.
- (d) Repealed by Session Laws 2005-400, s. 4, effective January 1, 2006. (1985 (Reg. Sess., 1986), c. 928, s. 1(a); 1985 (Reg. Sess., 1986), c. 1013, s. 1; 1987, c. 528, ss. 4-10; 1989, c. 485, s. 27; 1995, c. 533, s. 1; 1997-475, ss. 2.3, 2.4; 1999-219, s. 7.2; 2003-115, ss. 1, 2; 2005-400, s. 4; 2009-242, s. 1; 2011-196, s. 10.)